MICHIGAN COURTS NEWS RELEASE
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Michigan Supreme Court to Hear Oral Arguments December 7 and 8

LANSING, MI, November 23, 2016 - The Michigan Supreme Court will hear cases concerning medical, business, criminal, property, and estate issues, and a termination of parental rights challenge during oral arguments on December 7 and 8.

Oral arguments are held on the sixth floor of the Hall of Justice in Lansing, beginning at 9:30 each day. The schedule of arguments is posted on the Supreme Court's oral arguments homepage.

The Court broadcasts oral arguments and other hearings live via streaming video technology. Watch the stream live only while the Court is in session and on the bench. Streaming will begin shortly before the hearings start; audio will be muted until justices take the bench. Follow the Court on Twitter to receive regular updates as cases are heard. Archived video is available on YouTube.

Please contact the Office of Public Information at (517) 373-0714 or browneb@courts.mi.gov for permission to film or photograph during the hearing. See the link to Request and Notice for Film and Electronic Media Coverage of Court Proceedings.

These brief accounts may not reflect the way that some or all of the Court's seven justices view the cases. The attorneys may also disagree about the facts, issues, procedural history, and significance of these cases. For further details about the cases, please contact the attorneys.

Wednesday, December 7

Morning Session

Chance Lowery v Enbridge Energy - Docket # 151600

CHANCE LOWERY, Nadia Hamade
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Calhoun – Kingsley, J.)

ENBRIDGE ENERGY, LIMITED PARTNERSHIP Phillip J. DeRosier
and ENBRIDGE ENERGY PARTNERS, L.P.,
Defendants-Appellants.

The plaintiff in this case claims that he became ill after being exposed to toxic fumes caused by defendant Enbridge Energy's oil spill in the Kalamazoo River in 2010. The circuit court granted summary disposition to Enbridge and dismissed the plaintiff's lawsuit. The court ruled that the plaintiff had failed to establish a causal link between the spill and his illness because he did not present expert testimony to support his claim. The Court of Appeals reversed in an unpublished opinion. The two judges in the majority held that the plaintiff did not need expert testimony because there was a logical sequence of cause and effect connecting the oil spill to his illness. The dissenting judge would have affirmed the lower court. The Supreme Court granted leave to appeal, asking the parties to address: (1) whether the plaintiff in this toxic tort case sufficiently established causation to avoid summary disposition under the Michigan Court Rules; and (2) whether the plaintiff was required to present expert witness testimony regarding general and specific causation.

Covenant Med Ctr v State Farm Mut Auto Ins Co - Docket # 152758

COVENANT MEDICAL CENTER, INC.,

Plaintiff-Appellee, — Christopher J. Schneider, Richard E. Hillary, II

v (Appeal from Ct of Appeals)
(Saginaw – Kaczmarek, R.)

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,
Defendant-Appellant. — Jill M. Wheaton

Jack Stockford was injured in a motor vehicle accident and received medical care from plaintiff Covenant Medical Center that cost over $40,000. Defendant State Farm was Stockford's no-fault insurer, and Covenant billed State Farm for its services. State Farm settled Stockford's no-fault medical benefit claims by paying Stockford, not Covenant. Stockford signed a release, agreeing that State Farm satisfied its obligations. Covenant then sued State Farm for Stockford's cost of care. The circuit judge granted State Farm summary disposition based on a release signed by Stockford. The Court of Appeals reversed in a published opinion. State Farm filed an application for leave to appeal in the Supreme Court, arguing that Covenant's claim is barred by Stockford's release. The Supreme Court granted leave to appeal and asked the parties to brief: (1) whether a healthcare provider has an independent or derivative claim against a no-fault insurer for no-fault benefits; (2) whether a healthcare provider constitutes "some other person" within the meaning of the second sentence of MCL 500.3112; and (3) the extent to which a hearing is required by MCL 500.3112.

Dragen Perkovic v Zurich American Ins Co - Docket # 152484

DRAGEN PERKOVIC,
Plaintiff-Appellant, — Mark R. Granzotto

v (Appeal from Ct of Appeals)
(Wayne – Oxholm, M.)

ZURICH AMERICAN INSURANCE CO,
Defendant-Appellee. — James K. O'Brien

On February 28, 2009, Dragen Perkovic was injured in a motor vehicle accident while operating a semi-truck in Nebraska, and received medical treatment at the Nebraska Medical Center. Zurich American Insurance insured the company Perkovic was working for at the time of the accident. Approximately two months after the accident, the Nebraska Medical Center sent a bill for the services it provided to Perkovic to Zurich American, which did not pay for the services. Perkovic then filed suit in Wayne County for unpaid no-fault personal protection insurance ("PIP") benefits arising out of the accident. Plaintiff did not originally sue Zurich American, but instead brought them into the suit more than one year after the accident. Zurich filed a motion for summary disposition arguing that Perkovic's claims against it were barred by the one-year statute of limitations in MCL 500.3145(1). Perkovic argued that the one-year statute of limitations did not bar the suit because the Nebraska Medical Center provided notice of the claim a few months after the accident, thus satisfying the requirements of the notice provisions in MCL 500.3145(1). The trial court granted Zurich's motion for summary disposition, and the Court of Appeals affirmed in a published opinion. The Supreme Court directed the Clerk to schedule oral argument on the application, directing the parties to brief whether Perkovic, or someone acting on his behalf, satisfied the notice requirements of MCL 500.3145(1).

Afternoon Session

In re Hicks/Brown, Minors - Docket # 153786

IN RE HICKS/BROWN, Minors (appellants),	William E. Ladd
____	
DEPARTMENT OF HEALTH & HUMAN SERVICES, Petitioner-Appellee,	Leslie Carr Fairrow (aligned with appellants)
v (Appeal from Ct of Appeals (Wayne, Family Division – Dingell, C.)	
[RESPONDENT MOTHER], Respondent-Appellee, and	Vivek Sankaran
[RESPONDENT FATHER], Respondent.	

In this termination of parental rights case, the respondent-mother of the children, who is mentally challenged, claims that that the Department of Health and Human Services (DHHS) failed to accommodate her disability under the Americans with Disabilities Act (ADA). The respondent's rights to her two children were terminated after a finding that there was no improvement in her parenting abilities for over two years. The Court of Appeals reversed the termination, ruling in a published opinion that the respondent's rights under the ADA were infringed. The Supreme Court directed the Clerk to schedule oral argument on the application, and asked the parties to address: (1) whether the respondent-mother made a timely request for accommodation of her disability in the service plan prepared by the Department of Health and Human Services; (2) whether the Department of Health and Human Services made "reasonable efforts to reunify the child and family," as required by MCL 712A.19a(2), given the respondent-mother's disability; and (3) whether the failure to provide a service plan that accommodates a respondent's disability may be grounds for reversal of a termination of parental rights on appeal, under either the Americans with Disabilities Act or under the Probate Code, MCL 712A.19a(2), where there is no determination that the trial court erred in finding grounds for termination or that termination was in the best interests of the children.

People v Boban Temelkoski - Docket # 150643

PEOPLE OF THE STATE OF MICHIGAN, Julie A. Powell
Plaintiff-Appellee,

v (Appeal from Ct of Appeals)
(Wayne – Chylinski, J.)

BOBAN TEMELKOSKI, David Herskovic
Defendant-Appellant.

In 1993, when the defendant was 19 years old, he committed second-degree criminal sexual conduct. He pled guilty to the offense under the Holmes Youthful Trainee Act (HYTA), which allows a young offender to be placed on probation for a number of years, and if probation is successfully completed, to avoid a felony conviction. While the defendant was still on probation in 1995, the Legislature enacted the Sex Offenders Registration Act (SORA), which required a defendant convicted of second-degree criminal sexual conduct to register for 25 years. That registration later became public. The Legislature subsequently imposed additional requirements on registered offenders, and in 2011 required lifetime registration. The defendant seeks removal from the registry, arguing that registration has become cruel and unusual punishment, and is an ex post facto law. The trial court granted the defendant's motion. The Court of Appeals reversed the trial court in a published opinion. The Supreme Court granted leave to appeal, asking the parties to brief: (1) whether the requirements of SORA amount to "punishment," under Michigan law; (2) whether the answer to that question is different when applied to individuals who have successfully completed probation under HYTA; (3) whether MCL 28.722(b) denies the defendant due process of law because it defines HYTA status as a "conviction" for purposes of SORA even though successful completion of HYTA requires the court to dismiss criminal proceedings without entering an order of conviction; (4) whether, assuming that the requirements of SORA do not amount to "punishment" as applied to the defendant, application of the civil regulatory scheme established by SORA to the defendant otherwise violates guarantees of due process; (5) whether requiring the defendant to register under SORA is an ex post facto punishment, where the registry has been made public, and other requirements enacted, only after the defendant committed the instant offense and pled guilty under HYTA; and (6) whether it is cruel and/or unusual punishment to require the defendant to register under SORA.

Shakeeta Simpson, PR of the Est of Simpson v Alex Pickens Assocs, MD PC - Docket # 152036

SHAKEETA SIMPSON, as Personal Mark R. Granzotto
Representative of the ESTATE OF ANTAUN
SIMPSON,
Plaintiff-Appellee,
and
SHAKEETA SIMPSON,
Plaintiff,

v (Appeal from Ct of Appeals)
(Wayne – Popke, L.)

ALEX PICKENS, JR. & ASSOCIATES, M.D., Anita L. Comorski
P.C., doing business as PICKENS MEDICAL
CENTER, BRIGHTMOOR GENERAL
MEDICAL CENTER, INC., doing business as

BRIGHTMOOR-PICKENS MEDICAL
CENTER, ALEX PICKENS, JR., M.D., and
LINDA S. HARTMAN, P.A.
Defendants-Appellants.

The plaintiff Shakeeta Simpson brought a wrongful-death medical malpractice action alleging that the defendants were negligent with regard to her prenatal care and treatment, and that their negligence caused the premature birth of her non-viable fetus at 18 weeks' gestation. Simpson asserted that her miscarriage was due to the defendants' failure to perform a cerclage, even though they knew that she suffered from cervical insufficiency that had caused two prior miscarriages. The defendants moved to dismiss the complaint, arguing that a prior decision of the Michigan Supreme Court, *Johnson v Pastoriza*, 491 Mich 417 (2012), requires a plaintiff to allege an "affirmative or positive act" to state a cause of action under a section of the Wrongful Death Act, MCL 600.2922a, not merely an omission or failure to act. The trial court agreed with the defendants, granted the defendants' motion, and dismissed Simpson's wrongful-death claim. The Court of Appeals reversed. The defendants filed an application for leave to appeal in the Supreme Court, and the Court directed the Clerk to schedule oral argument on the application. The Court will consider whether, in order to bring a wrongful-death action under MCL 600.2922 for the death of a fetus or embryo, a plaintiff must meet the affirmative-act requirement of MCL 600.2922a.

Thursday, December 8

Morning Session

In re Contempt of Kelly Michelle Dorsey - Docket # 150298
In re Contempt of KELLY MICHELLE DORSEY.

PEOPLE OF THE STATE OF MICHIGAN, Petitioner-Appellee,	William M. Worden
v (Appeal from Ct of Appeals) (Livingston – Reader, D.)	
[RESPONDENT MINOR], Respondent, and	
KELLY MICHELLE DORSEY, Appellant.	Kurt T. Koehler

Respondent Kelly Michelle Dorsey was twice held in criminal contempt for failing to obey a juvenile court order for random drug testing that was issued as part of her son's juvenile delinquency proceeding. In a published opinion, the Court of Appeals held that the drug testing order violated her constitutional right against a warrantless unreasonable search, but also held that she had waived any challenge to the order by failing to timely object. The Supreme Court ordered oral argument on whether to grant the application or take other action, and asked the parties to file briefs addressing: (1) whether the family court lacked subject matter jurisdiction to issue the order compelling Dorsey to submit to random drug testing as part of her son's juvenile delinquency proceeding; (2) whether Michigan recognizes any other exceptions to application of the collateral bar rule, including (a) lack of opportunity for meaningful appellate review of the drug testing order; or (b) Dorsey's irretrievable surrender of constitutional guarantees by complying with the drug testing order; and (3) whether Dorsey properly preserved question (2) for appellate review.

[Clam Lk Twp v Dep't of Licensing & Reg Affairs, Docket # 151800](#) and
[TeriDee, LLC v Haring Charter Twp, Docket # 153008](#)

CLAM LAKE TOWNSHIP and HARING CHARTER TOWNSHIP, Appellant,	Ronald M. Redick
v (Appeal from the Ct of Appeals) (Wexford – Fagerman, W.)	
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS / STATE BOUNDARY COMMISSION, TERIDEE LLC, and CITY OF CADILLAC, Appellee.	Laura J. Genovich
and	
TERIDEE LLC, JOHN F. KOETJE TRUST, and DELIA KOETJE TRUST, Plaintiffs-Appelees,	Brion B. Doyle
v (Appeal from the Ct. of Appeals) (Wexford – Fagerman, W.)	
HARING CHARTER TOWNSHIP and CLAM LAKE TOWNSHIP, Defendants-Appellants.	Ronald M. Redick

These two cases involve a proposed development near the City of Cadillac. The property at issue is in Clam Lake Township, and borders Cadillac to the west and Haring Township to the north. The developer of the property, TeriDee, filed a petition with the State Boundary Commission (SBC) requesting that its land be annexed to Cadillac for development purposes, so as to receive public services. But a month earlier, Clam Lake and Haring Townships entered into an Agreement pursuant to the Intergovernmental Conditional Transfer of Property by Contract Act (Act 425), conditionally transferring the land to Haring Township so that Haring Township would provide public services.

The *Clam Lk Twp* case concerns TeriDee's petition to the SBC, which voted unanimously to recommend that the Director of the Department of Licensing and Regulatory Affairs (DLRA) approve the petition for annexation and find the Townships' Act 425 Agreement to be invalid. The DLRA Director did just that, and the circuit court affirmed that decision on appeal. The Court of Appeals denied leave to appeal. The Supreme Court granted leave on April 6, 2016, asking the parties to address: (1) whether the SBC has the authority to determine the validity of an agreement made pursuant to Act 425; (2) if so, whether the SBC in this case properly determined that the Act 425 Agreement was invalid; and (3) whether the doctrine of collateral estoppel invalidates the SBC's 2014 approval of TeriDee's petition for annexation when the SBC denied the same property owner's petition in 2012.

The *TeriDee, LLC v Haring Charter Twp* case involves TeriDee's suit in the Wexford Circuit Court, challenging the validity of the Townships' Act 425 Agreement on different grounds and arguing in part that the development standards of the Act 425 Agreement unlawfully restricted Haring Township's legislative authority. The circuit court held that the Act 425 Agreement was void, and the Court of

Appeals affirmed in an unpublished opinion. By order of April 6, 2016, the Supreme Court granted leave to appeal, with a focus on: (1) whether the Act 425 Agreement was void because certain provisions of the Agreement contracted away Haring Township's legislative zoning authority; (2) if so, whether the offending provisions of the Act 425 Agreement were severable; and (3) whether the challenged provisions of the Act 425 Agreement were authorized by Section 6(c) of Act 425, MCL 124.26(c).

The two cases will be argued together.

Ivan Frank v Joshua Linkner - Docket # 151888

IVAN FRANK, JEFFREY DWOSKIN, PHILLIP D. JACOKES, ROY KRAUTHAMMER, BLAKE ATLER, MATT KOVALESKI, JAMES BRUNK, and IJF HOLDINGS, LLC,
Plaintiffs-Appellees, — Gerard Mantese

v (Appeal from Ct of Appeals)
(Oakland – O'Brien, C.)

JOSHUA LINKNER, BRIAN HERMELIN, CRACKERJACK, LLC, formerly known as EPRIZE, LLC, CRACKERJACK HOLDINGS, LLC, formerly known as EPRIZE HOLDINGS, LLC, DAVID KATZMAN, GARY SHIFFMAN, ARTHUR WEISS, CAMELOT-EPRIZE, LLC, BH ACQUISITIONS, LLC, DANIEL GILBERT, and JAY FARNER,
Defendants-Appellants. — Brian G. Shannon

This case arises out of the sale of a business known as ePrize and the distribution of the proceeds. ePrize was founded by the defendant Joshua Linkner in 1999, and specialized in online sweepstakes and promotions. Substantially all of its assets were sold in August of 2012. The plaintiffs are former ePrize employees, and the defendants were members of the corporation or had interests in one of its corporate members. Prior to the 2012 sale, ePrize had received a series of loans, called "Notes," and reorganized under different operating agreements. The plaintiffs claim that the defendants used the new agreements to obtain excessive returns on their own investments, while preventing plaintiffs from obtaining any of the funds from the sale of the company. In 2013, the plaintiffs filed a "limited liability company member oppression" lawsuit in the Oakland Circuit Court. The circuit court judge dismissed the case, finding that the plaintiffs' complaint was not timely filed under MCL 450.4515(1)(e). The Court of Appeals reversed the circuit court in a published decision. On February 3, 2016, the Supreme Court granted leave to appeal, asking the parties to address: (1) whether MCL 450.4515(1)(e) is a statute of repose, a statute of limitations, or both; and (2) when the plaintiffs' cause of action accrued.

Afternoon Session

In re Estate of Cliffman - Docket # 151998

In re Estate of CLIFFMAN.

PHILLIP CARTER, ELMER CARTER, DAVID CARTER, and DOUG CARTER
Appellants, — Kenneth A. Puzycki

v (Appeal from Ct of Appeals)
(Allegan Probate– Buck, M.)

RICHARD D. PERSINGER, Personal Representative of the Estate of GORDON JOHN CLIFFMAN, BETTY WOODWYK, and VIRGINIA WILSON,
Appellees. Kenneth B. Breese

In 2012, John Gordon Cliffman died from injuries he suffered in an automobile accident. Cliffman had no children and he died without leaving a will. His wife, Betty Carter, predeceased him, passing away in 1996. Carter had four sons, and Cliffman had two sisters. The issue in this case is whether Carter's sons are entitled to a share of the proceeds from the wrongful-death settlement. The probate court held that the sons were not entitled to any proceeds because their mother died before Cliffman. The Court of Appeals affirmed the probate court in an unpublished decision. The Supreme Court has ordered oral argument on the application for leave to appeal, and asked the parties to address whether a section of the Wrongful Death Act, MCL 600.2922(3)(b), allows stepchildren of a decedent to make a claim for damages where the natural parent predeceased the decedent, and if so, whether this Court should overrule *In re Combs Estate*, 257 Mich App 622 (2003).

Baruch SLS v Twp of Tittabawassee - Docket #152047

BARUCH SLS, INC.,
Petitioner-Appellant, Gregory G. Timmer

v (Appeal from Ct of Appeals)
(Tax Tribunal)

TOWNSHIP OF TITTABAWASSEE,
Respondent-Appellee. Gary R. Campbell

Petitioner Baruch SLS operates adult-foster care and assisted living facilities. The Township of Tittabawassee denied Baruch's request for property tax exemptions from real and personal property taxes under MCL 211.7o and MCL 211.9 for the 2010, 2011, and 2012 tax years, finding that it did not meet its burden of proof to demonstrate that it was a charitable institution. The Michigan Tax Tribunal (MTT) also denied the request for an exemption, concluding that Baruch does not meet the test for charitable institutions set forth in *Wexford Med Group v City of Cadillac*, 474 Mich 192, 215 (2006). The Court of Appeals reversed part of the MTT's decision, but it also held that Baruch was not entitled to the exemptions, because its entrance policy "discriminated" against the group it sought to serve by admitting only individuals who could afford to pay the "entry fees" for use of the facilities. Baruch argued that regardless of what its policies state, in reality it serves low income individuals. Baruch filed an application for leave to appeal in the Supreme Court, and the Court directed the Clerk to schedule oral argument on the application. The parties were asked to brief: (1) whether *Wexford Medical Group v City of Cadillac*, 474 Mich 192 (2006), correctly held that an institution does not qualify as a "charitable institution" under MCL 211.7o or MCL 211.9 if it offers its charity on a "discriminatory basis"; (2) if so, how "discriminatory basis" should be given proper meaning; (3) the extent to which the relationship between an institution's written policies and its actual distribution of charitable resources is relevant to that definition; and (4) whether, given the foregoing, the petitioner is entitled to a tax exemption.